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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1002 OF 2005

Dr.Zakir A.R.Dhange ...Appellant

Vs.

Smt.Prajakati Damodar Patil & Ors. ...Respondents.

Mr. P.S.Dani, for the appellant.

Mr. S.D.Patil for respondent Nos. 1 to 3.

CORAM : ANOOP V. MOHTA,J.

DATED : 8th August, 2007

P.C.

1. The appellant-plaintiff's suit for specific performance was dismissed. The operative order is as under:-

> "1. The suit of the plaintiff for specific performance of contract is hereby stands dismissed.
>
> 2. However, the defendants are hereby ordered and directed to return an amount of Rs.34,000/- to the plaintiff together with interest at the rate of 12% p.a. from the date of filing this suit till actual realization of the entire amount.

3. The plaintiff shall pay the cost of this suit to the defendant and bear his own.

4. A decree be drawn up accordingly."

2. The appellate Court has dismissed the order and modified the decree of the trial court order as under:-

"1. The appeal is dismissed with costs.

2. The judgment and decree directing the defendants to refund Rs.34,000/- with interest at the rate of 12% per annum, is set aside.

3. The suit is dismissed with costs.

4. Decree be drawn accordingly."

3. The appellate Court is right in passing the above order. Based on the agreement dated 13th January, 1986. The plaintiff has filed the suit some time in the year 1992. In view of Article 54 of the Limitation Act, the limitation to file such suit is of

three years. The appellate Court, therefore, has framed the issue with regard to the limitation and rightly observed as under:-

> "19. In view of the express terms of the agreement, the time started running after passing of one year mentioned in the agreement. In view of Article 54 of the Limitation Act, the suit ought to have been filed within three years from the date fixed for performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. The time was specified in the agreement and the suit is not filed within limitation from it."

4. In view of this, the dismissal of the appeal on the grounds of facts by confirming the same need no interference. The plaintiff-appellant failed to prove that the deceased entered into the agreement of the sale of suit land. The defendants committed any breach of the terms; the plaintiff failed to prove that he is ready and willing to perform his part of the contract, therefore, dismissed the suit and further not granted any injunction as prayed.

5. Once the suit was beyond limitation, the grant of damages /monetary consideration of Rs.34,000/- at 12% p.a. is, therefore, also rightly set aside as it is beyond the period of limitation. Even on merit, as there is no payment proved the grant of refund of the said money based upon the agreement in question, is also, therefore, incorrect. There is nothing to show that the so called amount was paid or received towards the agreement in question between the parties.

6. Taking all this into account, there is no substance in the Second Appeal as there is no perversity or any question of law involved in the matter. The reliance on the order dated 25th November, 2002, the admission of Second Appeal No. 788 of 2002 between the appellant and other parties is different on facts and circumstances. By order dated 25th November, 2007 in Second Appeal No. 788 of 2002 between the plaintiff and some other respondents, this Court has rejected the Second Appeal on the similarly based circumstances by giving reasons on the issues about the readiness and willingness, apart from non-existence of agreement between the parties.

7. In the result, the Second Appeal is dismissed.

(ANOOP V. MOHTA, J.)